

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

UNITED STATES OF AMERICA,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Civil Action No.: 7:23-cv-318
)	
A&G COAL CORP., et al)	
)	
<i>Defendants.</i>)	

ANSWER

Defendants A&G Coal Corp., Bluestone Coal Corp., Bluestone Oil Corp., Chestnut Land Holdings, LLC, Dynamic Energy, Inc., Frontier Coal Co., Justice Energy Co., Kentucky Fuel Corp., National Coal, LLC, Pay Car Mining, Inc. Premium Coal Company, Inc., S and H Mining, Tams Management, Inc, and James C. Justice, III (collectively the “Defendants”), and for their Answer to the Complaint filed by the United States state as follows:

1. Defendants deny that they have violated all of their legal obligations under the Surface Mining Control and Reclamation Act of 1977 (“SMCRA”), that they have violated all aspects of their permits, and that they have not paid all of the uncontested penalties assessed. Defendants admit that they have been cited for violations and civil penalties assessed by the Office of Surface Mining Reclamation and Enforcement (“OSMRE”). Defendants further admit that they have been assessed and have unpaid Abandoned Mine Land fee debt.

2. Defendants admit the allegations in paragraph 2.

3. Defendants admit the allegations in paragraph 3.

4. Defendants admit the allegations in paragraph 4.

5. Defendants admit the allegations in paragraph 5.

6. Defendants admit the allegations in paragraph 6.
7. Defendants admit the allegations in paragraph 7.
8. Defendants admit the allegations in paragraph 8.
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23. Defendants admit the allegations in paragraph 23.
24. Defendants admit the allegations in paragraph 24.
25. Defendants admit the allegations in paragraph 25.
26. Defendants admit the allegations in paragraph 26.
27. Defendants admit that at one time it conducted surfacing mine operations in Tennessee or purchased companies that conducted such operations.

28. Defendants admit that OSMRE assessed civil penalties against them for operations in Tennessee. Defendants further admit that they were the permittees for certain coal mining operations governed by OSMRE.

29. Defendants admit the allegations in paragraph 29.

30. Defendants admit the allegations in paragraph 30.

31. Defendants admit the allegations in paragraph 31.

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59. Defendants admit that OSMRE issued violations and cessation orders for certain reclamation work on its properties. Defendants deny that the violations pose health or safety risks or threaten environmental harm.

60. Defendants admit the allegations in paragraph 60.

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- 72. Defendants deny the allegations in paragraph 72.
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- 118. Defendants deny the allegations in paragraph 118.
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- 136. Defendants deny the allegations in paragraph 136.
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617. Defendants deny the allegations in paragraph 617.

618. Defendants admit the allegations in paragraph 618.

619. Defendants admit the allegations in paragraph 619.

620. Defendants admit the allegations in paragraph 620.

621. Defendants admit the allegations in paragraph 621.

622. Defendants admit the allegations in paragraph 622.

623. Defendants admit the allegations in paragraph 623.

624. Defendants admit the allegations in paragraph 604.

625. Defendants admit the allegations in paragraph 625.

626. Defendants deny the allegations in paragraph 626.

627. Defendants admit the allegations in paragraph 627.

628. Defendants admit the allegations in paragraph 628.

629. Defendants repeat and reallege the preceding paragraphs and responses as if set out fully herein.

630. Defendants admit the allegations in paragraph 630.

631. Defendants admit the allegations in paragraph 631.

632. Defendants admit the allegations in paragraph 632.

633. Defendants admit the allegations in paragraph 633.

634. Defendants admit the allegations in paragraph 634.

635. Defendants admit the allegations in paragraph 635.

636. Defendants admit the allegations in paragraph 636.

637. Defendants admit the allegations in paragraph 637.

638. Defendants deny the allegations in paragraph 632.

639. Defendants admit the allegations in paragraph 639.

640. Defendants repeat and reallege the preceding paragraphs and responses as if set out fully herein.

641. Defendants admit the allegations in paragraph 641.

642. Defendants deny the allegations in paragraph 642.

643. Defendants deny the allegations in paragraph 643.

644. Defendants deny the allegations in paragraph 644.

645. Defendants deny the allegations in paragraph 645.

646. Defendants deny the allegations in paragraph 646.

647. Defendants deny the allegations in paragraph 647.

648. Defendants deny the allegations in paragraph 648.

649. Defendants repeat and reallege the preceding paragraphs and responses as if set out fully herein.

650. Defendants admit the allegations in paragraph 650.

651. Defendants admit the allegations in paragraph 651.

652. Defendants deny the allegations in paragraph 652.

653. Defendants deny the allegations in paragraph 653.

654. Defendants admit the allegations in paragraph 654.

655. Defendants admit the allegations in paragraph 655.

656. Any allegation not specifically admitted shall be deemed denied.

DEFENSES

1. The foregoing admissions and concessions are premised upon the United States' ability to establish compliance with the notice and service provisions of Surface Mining Control and Reclamation Act of 1977. To the extent, notice and service were not proper, Defendants reserve their right to amend this Answer.

2. Certain claims may be barred by the applicable statute of limitations. Defendants reserve their right to amend this Answer should it be established in discovery that the United States claims did not accrue on or before May 30, 2018. *See e.g., U.S. v. Core Laboratories,*

Inc., 759 F.2d 480 (5th Cir. 1985).

3. The Defendants have not actively mined the properties and permits subject to this enforcement action since 2017. Give the nature of the violations, the Defendant's lack of active mining and attendant financial positions, and the amount of assessed penalties, the Defendants assert that penalties assessed violate the Excessive Fines Clause of the Eighth Amendment of the United States Constitution. The individual penalties constitute a punishment on Defendant Justice given the facts of this case. Moreover, the remedial scheme at issue incentivizes the United States on imposing excessive individual penalties as a means of generating revenue.

4. Defendants reserve the right to amend their Answer after receipt of discovery from the United States.

WHEREFORE, Defendants respectfully requests Judgment in their favor herein as follows:

- A. The dismissal of the Complaint on all claims against them, with prejudice;
- B. A trial by jury on all Counts asserted in the Complaint and all claims and defenses asserted by the Defendants; and
- C. Such other and further relief to which the Defendants are entitled in addition to the costs and disbursements of this action.

Respectfully submitted,

A&G COAL CORP., et al.

By: /s/ Aaron Balla Houchens
Of Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2023, a true and accurate copy of the foregoing was provided to the following via the Court's CM/ECF electronic filing system:

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